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WISCONSIN LEGISLATURE

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PRESS RELEASE

From the offices of
State Representative Rebecca Young
and State Senator Gwendolynne Moore
State Capitol
Madison, WI 53708

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TRANSFER OF WELFARE FUNDING CRITICIZED

State Senator Gwendolynne Moore (D. Milwaukee) and State Representative Rebecca Young (D. Madison) called on the Joint Finance Committee to hold an \$85 million carryover in federal welfare reform dollars to fix W-2, Wisconsin's Welfare Reform initiative when it goes fully into effect in the next biennium.

"Throughout the debate on the Wisconsin Works welfare reform legislation, Governor Thompson argued that making welfare reform work in the short run would require greater expenditures than under the old welfare system", Representative Young stated. "But Friday when his plans for federal welfare reform funds were revealed, it became evident that he plans to renege on his commitment by diverting federal welfare funds to fill a hole in the next state budget", Young said.

Senator Moore stated, "The Governor is playing a shell game with the federal welfare reform funding, transferring it into another block grant in order to offset the funding the state committed to spend for the foster care system in Milwaukee." Moore added, "This laundering of Wisconsin's share of the federal welfare reform appropriation shortchanges the Wisconsin Works program before we have had a chance to plug the many gaps in W-2".

"Last spring newspapers like the Wall Street Journal applauded W-2 because the Governor was willing to face the fact that providing child care, transportation and jobs to people who have been on welfare is more expensive than paying them to stay home with their children", Young said. "Yet now the Governor is undercutting the funding that will be needed to pay for the services that W-2's proponents promised would be available to working poor families."

The two lawmakers offered several examples of aspects of the Wisconsin Works program that they believe will require additional funding in order to make the program work, including child care, adjusting work benefit levels on the basis of the minimum wage, and restoring food stamps to large refugee families.

"The W-2 program was premised on setting benefit levels so that people who perform the required work activities would receive as much as someone in a minimum wage job", Senator Moore stated. "Now that the minimum wage has been increased, we need to use \$25 million from the federal funding to keep the Legislature's promise of making community service jobs and transitional placements pay as much as a regular minimum wage job", Moore said.

Representative Young stated that the W-2 child care changes announced last week by Governor Thompson were a "significant step in recognizing some of W-2's deficiencies, but still leave very substantial problems in the W-2 child care system". Among the child care gaps, according to Young, is the denial of child care assistance for working foster parents, many low-income high school students, and disabled students over the age of 12.

Senator Moore referred to the child care eligibility changes as "drop-fare", explaining that many teen parents who now get child care assistance will lose it under W-2 and will have to drop out of high school.

"Another critical W-2 repair that will require a portion of the federal funds" Senator Moore said "is making refugee families, who often have large numbers of children, eligible for food stamps". Moore continued, "Food stamp eligibility is something that the W-2 advocates promised to these refugee families; but now, because of changes in federal law, the state will need to earmark a portion of our welfare funds to restore their food stamp benefits."

Representative Young noted that diverting the welfare reform dollars into other parts of the state budget would increase the amount of the costs that the new welfare initiatives shift onto county property taxpayers. "Dane County is already spending \$90,000 per year from local property taxes to pay the child care costs of low-income teenage parents who need child care to attend high school, and this is just one of the problems that will grow dramatically when W-2 is fully implemented", Young said.

Senator Moore concluded by noting that, "Shifting the federal funding out of the Wisconsin Works program is shortsighted, because failing to fund it adequately will only worsen the problems in the Milwaukee County foster care system."

ATTACHMENT 1
Governor's Child Care Workgroup Copayment Option*
20% Discount Between Licensed Care and Certified Care

Income as a Percentage of Federal Poverty Level	Licensed Care - Single Parent Family					Provisional Care - Single Parent Family				
	Number of Children in Care					Number of Children in Care				
	1	2	3	4	5	1	2	3	4	5
<75%	\$20	\$40	\$60	\$80	\$100	\$16	\$32	\$48	\$64	\$80
76-85%	40	60	80	100	120	32	48	64	80	96
86-95%	60	90	120	150	180	48	72	96	120	144
96-105%	80	110	140	170	200	64	88	112	136	160
106-115%	100	130	160	190	220	80	104	128	152	176
116-125%	120	150	180	210	240	96	120	144	168	192
126-135%	140	180	220	260	300	112	144	176	208	240
136-145%	160	200	240	280	320	128	160	192	224	256
146-155%	180	220	260	300	340	144	176	208	240	272
156-165%	200	240	280	320	360	160	192	224	256	288
166-200%	220	260	300	340	380	176	208	240	272	304

Income as a Percentage of Federal Poverty Level	Licensed Care - Two Parent Family					Provisional Care - Two Parent Family				
	Number of Children in Care					Number of Children in Care				
	1	2	3	4	5	1	2	3	4	5
<75%	\$30	\$50	\$70	\$90	\$110	\$24	\$40	\$56	\$72	\$88
76-85%	50	70	90	110	130	40	56	72	88	104
86-95%	70	100	130	160	190	56	80	104	128	152
96-105%	90	120	150	180	210	72	96	120	144	168
106-115%	110	140	170	200	230	88	112	136	160	184
116-125%	130	160	190	220	250	104	128	152	176	200
126-135%	150	190	230	270	310	120	152	184	216	248
136-145%	170	210	250	290	330	136	168	200	232	264
146-155%	190	230	270	310	350	152	184	216	248	280
156-165%	210	250	290	330	370	168	200	232	264	296
166-200%	230	270	310	350	390	184	216	248	280	312

*At the November 25, 1996, meeting of the Governor's Child Care Workgroup, the Workgroup requested staff to modify this copayment schedule to implement a 30% discount for certified care as the final recommendation to the Governor. The Workgroup specified that the licensed care copayments could be increased to achieve this 30% differential.

ATTACHMENT 2

Comparison of Monthly Child Care Copayments Under Current Law, Act 289 and 20% Discount Option¹

Income as % of FPL	Hourly Wage	Monthly Income	Copayments ²				Change Between 20% Discount Option and:					
			Current Law		Act 289		20% Discount Option		Act 289			
			Licensed	Provisional	Licensed	Provisional	Licensed	Provisional	Licensed	Provisional		
Single Parent -- One Child -- One in Child Care												
50%	\$2.59	\$432	\$0	\$0	\$30	\$15	\$20	\$16	-\$10	\$1	\$20	\$16
75%	3.88	647	0	0	30	15	20	16	-10	1	20	16
100%	5.18	863	27	27	65	33	70	56	5	23	43	29
125%	6.47	1,079	39	39	192	96	120	96	-72	0	81	57
150%	7.77	1,295	62	62	320	160	170	136	-150	-24	108	74
175% ³	9.06	1,511	174	174	396	198	207	165	-189	-33	33	-9
200% ³	10.36	1,727	279	198	396	198	396	198	0	0	117	0
225% ³	11.65	1,942	396	198	396	198	396	198	0	0	0	0
Single Parent -- Two Children -- One in Child Care												
50%	\$3.24	\$541	\$0	\$0	\$30	\$15	\$20	\$16	-\$10	\$1	\$20	\$16
75%	4.87	811	0	0	30	15	20	16	-10	1	20	16
100%	6.49	1,082	27	27	65	33	70	56	5	23	43	29
125%	8.11	1,352	40	40	192	96	120	96	-72	0	80	56
150%	9.73	1,622	75	75	320	160	170	136	-150	-24	95	61
175% ³	11.36	1,893	180	180	396	198	207	165	-190	-33	27	-15
200% ³	12.98	2,163	292	198	396	198	396	198	0	0	104	0
225% ³	14.60	2,434	396	198	396	198	396	198	0	0	0	0
Single Parent -- Two Children -- Two in Child Care												
50%	\$3.24	\$541	\$0	\$0	\$59	\$30	\$40	\$32	-\$19	\$2	\$40	\$32
75%	4.87	811	0	0	59	30	40	32	-19	2	40	32
100%	6.49	1,082	27	27	130	65	100	80	-30	15	73	53
125%	8.11	1,352	40	40	385	192	150	120	-235	-72	110	80
150%	9.73	1,622	75	75	639	320	210	168	-429	-152	135	93
175% ³	11.36	1,893	180	180	792	396	258	208	-534	-188	78	28
200% ³	12.98	2,163	292	292	792	396	792	396	0	0	500	104
225% ³	14.60	2,434	792	396	792	396	792	396	0	0	0	0

¹At the November 25, 1996, meeting of the Governor's Child Care Workgroup, the Workgroup requested staff to modify this copayment option to implement a 20% discount for certified care as the final recommendation to the Governor. The Workgroup specified that the copayment for licensed care could be increased to achieve this 30% differential, which could result in a 14% increase for licensed care rates.

²It is assumed that licensed care cost is \$396 per child and provisional child care cost is \$198 per child.

³Child care subsidies for families with income above 165% of FPL are (would be) only available to existing recipients of child care subsidies so that new applicants at this income level would have the same copayments (full cost) under all three plans.

ATTACHMENT 2 (cont.)

Comparison of Monthly Child Care Copayments Under Current Law, Act 289 and 20% Discount Option¹

Income as % of FPL	Hourly Wage	Monthly Income	Copayments ²						Change Between 20% Discount Option and:			
			Current Law		Act 289		20% Discount Option		Act 289		Current Law	
			Licensed	Provisional	Licensed	Provisional	Licensed	Provisional	Licensed	Provisional	Licensed	Provisional
Single Parent -- Three Children -- One in Child Care												
50%	\$3.90	\$650	\$0	\$0	\$30	\$15	\$20	\$16	-\$10	\$1	\$20	\$16
75%	5.85	975	0	0	30	15	20	16	-10	1	20	16
100%	7.80	1,300	27	27	65	33	70	56	5	23	43	29
125%	9.75	1,625	41	41	192	96	120	96	-72	0	79	55
150%	11.70	1,950	81	81	320	160	170	136	-150	-24	89	55
175% ³	13.65	2,275	186	186	396	198	207	165	-190	-33	21	-21
200% ³	15.60	2,600	298	198	396	198	396	198	0	0	98	0
225% ³	17.55	2,925	396	198	396	198	396	198	0	0	0	0
Single Parent -- Three Children -- Two in Child Care												
50%	\$3.90	\$650	\$0	\$0	\$59	\$30	\$40	\$32	-\$19	\$2	\$40	\$32
75%	5.85	975	0	0	59	30	40	32	-19	2	40	32
100%	7.80	1,300	27	27	130	65	100	80	-30	15	73	53
125%	9.75	1,625	41	41	385	192	150	120	-235	-72	109	79
150%	11.70	1,950	81	81	639	320	210	168	-429	-152	129	87
175% ³	13.65	2,275	186	186	792	396	258	208	-534	-188	72	22
200% ³	15.60	2,600	298	298	792	396	792	396	0	0	494	98
225% ³	17.55	2,925	396	396	792	396	792	396	0	0	0	0
Single Parent -- Three Children -- Three in Child Care												
50%	\$3.90	\$650	\$0	\$0	\$89	\$45	\$60	\$48	-\$29	\$3	\$60	\$48
75%	5.85	975	0	0	89	45	60	48	-29	3	60	48
100%	7.80	1,300	27	27	195	98	130	104	-65	6	103	77
125%	9.75	1,625	41	41	577	289	180	144	-397	-145	139	103
150%	11.70	1,950	81	81	959	479	250	200	-709	-279	169	119
175% ³	13.65	2,275	186	186	1,188	594	300	240	-888	-354	114	54
200% ³	15.60	2,600	298	298	1,188	594	1,188	594	0	0	890	296
225% ³	17.55	2,925	396	396	1,188	594	1,188	594	0	0	0	0

¹At the November 25, 1996, meeting of the Governor's Child Care Workgroup, the Workgroup requested staff to modify this copayment option to implement a 20% discount for certified care as the final recommendation to the Governor. The Workgroup specified that the copayment for licensed care could be increased to achieve this 30% differential, which could result in a 14% increase for licensed care rates.

²It is assumed that licensed care cost is \$396 per child and provisional child care cost is \$198 per child.

³Child care subsidies for families with income above 165% of FPL are (would be) only available to existing recipients of child care subsidies so that new applicants at this income level would have the same copayments (full cost) under all three plans.

APPENDIX

1996 FEDERAL WELFARE REFORM LEGISLATION

The following sections outline major provisions of the federal welfare reform legislation in P.L. 104-193.

Federal Funding Sources

Basic TANF Block Grant. The primary federal funding source is the basic temporary family assistance grant, which is based on federal revenues provided to states under the AFDC and JOBS programs in recent years. Federal law provides three alternative methods of calculating a state's TANF grant; however, in most states (including Wisconsin) the grant will be based on federal expenditures for these programs in federal fiscal year 1995. The basic TANF grant is first available in FFY 1996. The federal legislation includes transition provisions for calculating pro-rated grant amounts in FFY 1996 and 1997, as states convert to the new program. After those years, the full amount will be provided in each year through FFY 2002.

Wisconsin's TANF grant will be \$318.2 million per year. In state fiscal year 1996-97, a pro-rated amount of \$273.3 million is provided for the period beginning August 22, 1996 and ending June 30, 1997. Federal matching funds were available for expenditures prior to August 22.

Bonus for High Performing States. States that are most successful in meeting the purposes of the block grant program will be eligible for a supplemental grant of up to 5% of the basic TANF grant (\$15.9 million in Wisconsin). The formula for measuring performance and determining eligibility for the bonus funding will be developed by the federal Department of Health and Human Services (HHS) in consultation with the National Governors Association and the American Public Welfare Association. The grants will be available beginning in FFY 1999.

Bonus For Reducing Out-of-Wedlock Births. Federal law also provides, beginning in FFY 1999, a bonus grant of \$20 million each for the five states that demonstrate the greatest decrease in out-of-wedlock births during the most recent two-year period without increasing the rate of induced pregnancy terminations over the rate in FFY 1995. If fewer than five states qualify, the grant amount will be increased to \$25 million.

Supplemental Funding. Certain states which have lower than average federal welfare spending per poor person or higher than average population growth may also receive supplemental grants beginning in FFY 1998. The Congressional Research Service estimates that Wisconsin will not qualify for this supplemental funding.

Contingency Fund. A contingency fund of \$2 billion is established for FFY 1997 through 2001 to provide matching grants to states with high and rising unemployment or significant increases in food stamp participation. Eligible states may receive contingency payments totalling 20% of the TANF grant in any single year. To receive a grant, the state must submit a request to HHS; payments must be made to states in the order requests are received. States must maintain 100% of historic state welfare spending during years when a contingency payment is made or must repay an amount reflecting the shortfall. In addition, states must share in the costs of contingency funds at their FFY 1996 medicaid matching rate.

Federal Loans for State Welfare Programs. The federal law also permits HHS to make loans to states which have not been sanctioned for misspending block grant funds. The loans may be used only for purposes for which a TANF grant may be used. The loans are to mature in three years, at the latest, and interest will be charged at a rate equal to the current average yield on outstanding marketable U.S. obligations with comparable remaining maturity periods. The cumulative amount that may be borrowed by a state from FFY 1997 through 2002 may not exceed 10% of the state's basic TANF block grant. The total amount of outstanding loans for all states may not exceed \$1.7 billion.

Child Care Funding. The federal legislation consolidates the previous AFDC-related and at-risk child care programs with the child care development block grant. Under the new law, three sources of federal child care funding are provided to states: a mandatory base allocation, mandatory matching funds and discretionary funds. The base allocation is based on previous child care expenditures under the AFDC and at-risk child care programs. No state match or maintenance of effort is required for the base allocation.

Matching funds are available for states that have expended the federal base allocation and state funds at least equal to the greater of FFY 1994 or 1995 expenditures for AFDC-related and at-risk child care. Matching funds are distributed to states based on the proportion of children in the state under age 13 and must be matched with state revenues at the medicaid financial participation rate for FFY 1995 (approximately 40% in Wisconsin).

Discretionary funds are allocated to states based on the formula that was used for the child care development block grant, which takes into account the state's share of population under age six, share of children receiving free or reduced-price school lunches and per capita income. Federal child care funding for Wisconsin is estimated to be \$51.3 million in the 1996-97 state fiscal year. Unlike the basic TANF block grant, child care funding will increase over time, because additional matching funds will be provided in later years.

State TANF Plan Requirements

In order to be eligible for a TANF block grant, a state must submit a plan to HHS that includes a written document describing how the state will conduct its statewide TANF program. The plan must be submitted during the two-year period immediately preceding the federal fiscal

year in which the grant will be provided. The initial plan must be submitted by July 1, 1997. Among other provisions, the plan must:

1. Set forth objective criteria for delivery of benefits and determinations of eligibility, and for fair and equitable treatment, including an explanation of how the state will provide opportunity for adversely affected recipients to be heard in a state administrative or appeal process;
2. Indicate how the state will require parents or caretakers receiving assistance to engage in work, as defined by the state, once such individuals have received assistance for 24 months (or earlier at state option) and how the state will ensure that parents and caretakers engage in required work activities;
3. Indicate whether the state intends to treat families moving into the state differently from current state residents and whether the state intends to aid noncitizens; and
4. Provide that the state will establish goals and take action to prevent and reduce the incidence of pregnancies outside marriage.

State plans also must include certifications that the state has established standards to ensure against fraud and abuse and that the state will: (a) operate a child support enforcement program; (b) operate a foster care and adoption assistance program and ensure medical assistance for the children; and (c) provide Indians with equitable access to assistance. In addition, the plan must specify which state agency or agencies will administer and supervise the state plan and provide assurances that local governments and private organizations have been consulted and had at least 45 days to submit comments on the plan.

Use of Federal TANF Block Grants

Subject to several limitations, states may use TANF grants in any manner that is reasonably calculated to accomplish the purposes of the federal legislation, including activities previously authorized under the AFDC and JOBS programs, or to provide low-income households with assistance in meeting home heating and cooling costs. Federal law specifically permits states to use TANF funds to make payments or provide job-placement vouchers to state-approved public and private agencies that provide employment services to recipients of cash aid.

States may not use TANF grants to provide assistance to a family unless the family includes: (a) a minor child who resides with a custodial parent or other adult caretaker relative of the child; or (b) a pregnant individual. "Minor child" means an individual under the age of 18 or an individual who is under age 19 and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

States may not use more than 15% of the TANF grant for administration. However, this restriction does not apply to spending for information technology and computerization needed to implement required tracking and monitoring activities. Subject to certain limitations, states may transfer up to 30% of their TANF funds to carry out state programs under the social services block grant or the child care block grant. States also may reserve federal TANF funds provided in a fiscal year for the purpose of providing assistance under these provisions in another fiscal year.

States may apply program rules and benefit levels of the state from which a family moved if the family has lived in the new state of residence for fewer than 12 months.

States may use TANF grants to fund individual development accounts established by or on behalf of individuals who are eligible for TANF assistance to accumulate funds for post-secondary education expenses (paid directly to an eligible educational institution), qualified acquisition costs for first-time home buyers or contributions to business capitalization accounts.

Use of Federal Child Care Funding

States must use at least 70% of basic child care funding and federal matching funds to provide child care assistance to welfare recipients, individuals in work programs and attempting to leave welfare and individuals who are at risk of going on welfare. Federal law also requires 4% of total child care funding to be used for activities to improve the quality and availability of care, including consumer education for parents and the public, resource and referral services and activities that increase parental choice. In addition, certain administrative expenses may not exceed 5% of total federal child care funds. States must submit two-year plans, in conformance with federal requirements, outlining how child care programs will be administered.

State Maintenance of Effort Requirements

Beginning in FFY 1998, the basic TANF grant will be reduced by the amount, if any, by which qualified state expenditures for the previous fiscal year are less than the maintenance of effort requirement for the previous year. The maintenance of effort requirement is 75% of historic state expenditures if the state meets the mandatory work requirements or 80% if the state does not meet these requirements. "Historic state expenditures" generally means FFY 1994 expenditures for AFDC, JOBS, AFDC-emergency assistance, AFDC-related child care and at-risk child care.

"Qualified state expenditures" means the total state expenditures during a fiscal year under all state programs for the following types of assistance for families that are eligible for TANF assistance and families that would be eligible but for the application of the 60-month time limit or the treatment of noncitizens: (a) cash assistance and child care assistance; (b) educational activities (excluding most expenditures for public education) designed to increase self-sufficiency, job training and work; (c) administrative costs associated with providing these types of assistance,

capped at 15% of total qualified state expenditures; and (d) any other use of funds allowed under the TANF provisions.

Qualified expenditures exclude funds transferred from state or local programs except those that exceed the amount expended in FFY 1996 or those for which the state is entitled to a federal payment under former AFDC or JOBS provisions. Qualified state expenditures also exclude amounts made available by the federal government and any state funds which are: (a) expended under the medicaid program; (b) used to match federal funds; or (c) expended as a condition of receiving federal funds from other programs (except for certain child care expenditures).

Mandatory Work Requirements

Work Participation Requirements. As noted, the state plan must assure that parents or caretakers receiving assistance will be required to engage in work once such individuals have received assistance for 24 months, or earlier at state option.

Federal law also includes targets that states must meet in placing TANF recipients into employment activities. Specifically, states must ensure that 25% of all families receiving assistance are participating in work activities in FFY 1997. The participation requirement is increased by 5% in each fiscal year until 50% participation is required in 2002 and thereafter. In addition, states must ensure that 75% of two-parent families receiving assistance are participating in work activities in FFY 1997 and 1998. The participation requirement increases to 90% in 1999 and thereafter.

In calculating work participation rates, states may exclude families that have recently been sanctioned for refusal to work (families that are subject to a penalty in the current month but have not been sanctioned for more than three months in the preceding 12-month period). States also have the option of including or excluding families in the state that are receiving assistance under an approved tribal family assistance plan.

A state's work participation requirements for a year will be reduced by one percentage point for each percentage point that the average monthly caseload in the previous year is below the monthly average AFDC caseload in FFY 1995. In determining these reductions, HHS may not take into account caseload decreases required by federal law or decreases that result from changes in state eligibility criteria. Based on unadjusted caseload data through September, 1996, it appears that the total reduction from FFY 1995 is 17.1% (15.5% for AFDC-R and 35.5% for AFDC-U). These figures will be used to adjust the participation requirement for FFY 1997.

States also have the option of not requiring single, custodial parents who are caring for a child under 12 months of age to engage in work. Such individuals may be disregarded in calculating the participation rates for not more than 12 months.

Definition of "Engaged in Work". The federal definition of "engaged in work" includes a broad range of activities, and the required hours of participation differ depending upon family size and composition.

Qualified Activities. Under federal law, work activities may include: unsubsidized employment; subsidized employment; on-the-job training; job search and job readiness (generally not to exceed six weeks or four consecutive weeks); community service programs; vocational educational training (not to exceed 12 months for any individual); job skills training directly related to employment; and the provision of child care services to participants in community service. Recipients who have not completed secondary school may attend secondary school or a course of study leading to a certificate of general equivalence or may participate in other educational activities directly related to employment.

General Participation Requirement. A recipient is considered to be engaged in work for a month if he or she is participating in the work activities listed above for at least 20 hours per week in FFY 1997 and 1998, 25 hours in 1999 and 30 hours in 2000 and thereafter. In each year, at least 20 hours per week must be attributable to activities other than certain education and training activities. For single parents of children under age six, the 20-hour work requirement will not increase after FFY 1998.

Two-Parent Families. Individuals in two-parent families are considered to be engaged in work for a month if the individual is making progress in the work activities listed above for at least 35 hours per week. At least 30 hours per week must be attributable to activities other than specified education and training activities. In addition, the individual's spouse must be making progress in certain work activities, if the family receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child.

Teen Parents: School Attendance. A single parent under age 20 is deemed to be engaged in work a month if the individual: (a) maintains satisfactory attendance at secondary school or the equivalent during the month; or (b) participates in education directly related to employment for at least the minimum number of hours per week specified above (20 hours in FFY 1997 and 1998, 25 hours in 1999 and 30 hours in 2000 and thereafter).

Limit on Vocational Education and Teen Parents Attending School. In calculating the participation rates, not more than 20% of individuals in all families and in two-parent families may be determined to be engaged in work by reason of participation in vocational educational training or by reason of the school attendance provision for teen parents. The 20% limit applies to both of these participation categories combined.

Penalties Against Individuals for Nonparticipation. In general, if a TANF recipient refuses to engage in required work activities, the state must reduce the amount payable to the family on a pro-rated basis (or more at state option) or terminate such assistance, subject to good cause and other exceptions as the state may establish. However, a state may not reduce or terminate

assistance based on a refusal to work for a single custodial parent caring for a child under age six, if the individual has a demonstrated inability to obtain needed child care.

Financial Penalties on States

Federal law imposes financial penalties (generally up to 5% of the basic TANF block grant) on states that fail to comply with various provisions of the TANF legislation. These violations include misuse of TANF funds; failure to submit required reports; failure to satisfy work participation requirements; failure to verify income and eligibility; failure to comply with paternity establishment and child support enforcement requirements; failure to repay a federal welfare loan; failure to comply with the 60-month time limit; failure to meet the 100% maintenance of effort requirement for states receiving contingency funds; and failure to assist families that cannot obtain adequate child care.

In general, a sanction may not be imposed on a state if HHS determines that the state had reasonable cause for failing to comply with the requirement. However, this does not apply to penalties for failure to comply with the general maintenance of effort requirement or failure to substantially comply with federal requirements for state child support enforcement programs.

Before a penalty may be imposed on a state, HHS must notify the state of the violation and allow the state the opportunity to enter into a corrective compliance plan which outlines how the state will correct the violation and ensure continuing compliance. This provision applies to all of the violations outlined above, except failure to repay a federal welfare loan. Federal law also includes a procedure by which states can appeal adverse decisions by HHS regarding the TANF program.

If a state's basic TANF grant is reduced in a fiscal year as a result of one of the penalties described above, the state must replace the penalized funds in the following fiscal year using state revenues. The total amount of penalties imposed on a state may not reduce any quarterly payment of the state's TANF grant by more than 25%. If this limitation prevents HHS from recovering the full penalty in a fiscal year, the remaining sanction may be carried forward into the immediately following fiscal year.

Other TANF Provisions

60-Month Time Limit. In general, assistance may not be provided if the family includes an adult who has received assistance under any state TANF program for 60 months (whether or not consecutive). This provision may not be interpreted to require any state to provide assistance to any individual for any period of time under a state TANF program. States may exempt families from the 60-month time limit by reason of hardship or if the family includes a member who has been battered or subjected to extreme cruelty. The number of exemptions allowed under this provision in a fiscal year may not exceed 20% of the average monthly number of families receiving assistance in that year.

In calculating the number of months that a parent or pregnant individual has received assistance, the state must disregard any month for which assistance was provided while the individual was a minor child and not the head of a household or married to the head of a household. States also must disregard months during which the adult lived on an Indian reservation or Alaskan Native Village if the reservation or village had at least 1,000 residents and at least 50% of the adult residents were unemployed.

States may expend state funds not originating with the federal government on benefits for children or families that have become ineligible for TANF assistance by reason of the 60-month time limit.

School Attendance Sanctions. States are permitted, but not required, to sanction a family that includes an adult who has received assistance under the TANF or food stamp programs if the adult fails to ensure that his or her minor dependent children attend school as required by state law. States are also permitted to sanction a family that includes an adult who is older than age 20 and younger than age 51 if the adult does not have (or is not working toward attaining) a secondary school diploma or its equivalent. A sanction may not be imposed if the adult has been determined in the judgement of medical, psychiatric or other appropriate professionals to lack the requisite capacity to successfully complete such a course of study.

Noncooperation With Paternity Establishment or Child Support. If it is determined that an individual is not cooperating with the state in establishing paternity or in establishing, modifying or enforcing a support order with respect to the individual's child, the state must reduce the amount of assistance provided by at least 25%. States may reduce the grant by more than 25% or deny the family any assistance. This provision does not apply if the individual qualifies for any good cause or other exception established by the state.

Assignment of Child Support. As a condition of eligibility for assistance, states must require family members to assign to the state any rights the family member may have to child support or spousal support, not to exceed the total amount of assistance provided. States may not require the assignment of support that accrues after the date the family leaves the program. A portion of child support collected on behalf of families that are receiving TANF assistance must be paid to the federal government, based on the federal financial participation rate for medicaid (approximately 60%).

Assistance for Teen Parents. States may not use TANF grants to provide assistance to an unmarried individual under age 18 who has a minor child at least 12 weeks old in his or her care unless the individual: (a) has successfully completed a high school education (or its equivalent); or (b) participates in educational activities directed toward attainment of a high school diploma or its equivalent or in an alternative educational or training program that has been approved by the state. Federal law also requires teen parents receiving assistance to live with their parents or in an approved, adult-supervised setting.

Transitional Medical Assistance Coverage. As under prior law, transitional medicaid coverage must be provided for 12 months for TANF recipients who lose eligibility for cash assistance due to increased earnings and for four months for recipients who become ineligible for cash assistance due the receipt of child or spousal support. In order to be eligible for transitional medicaid, the family must have received cash assistance in at least three of six months before the month in which they became ineligible.

Direct Funding and Administration by Indian Tribes. Federal law requires HHS to pay to each Indian tribe that has an approved tribal assistance plan a tribal family assistance grant, based on federal payments under the AFDC and JOBS programs in FFY 1994 for Indian families residing in the service area identified by the tribe. The TANF grant for any state in which a tribal service area lies must be reduced by the portion of the tribal grant that is attributable to expenditures by the state.

HHS may also make grants to eligible tribes in an amount equal to the amount received by the tribe under the JOBS program in FFY 1994. In order to be eligible, a tribe must have conducted a tribal JOBS program in FFY 1995. The grants must be used to operate a program to make work opportunities available to tribal members. In addition, HHS must allocate not less than 1% and not more than 2% of total child care funding to Indian tribes.

HHS must establish, with the participation of Indian tribes, minimum work participation requirements, time limits for receipt of benefits and penalties for noncompliance of recipients for each tribe receiving a tribal assistance grant or a grant for tribal employment programs. These provisions must be consistent with the purposes of the tribal assistance program, consistent with the economic conditions and resources available to each tribe and similar to the penalty provisions used by state programs.

Other Provisions of P.L. 104-193

In addition to the TANF and child care provisions described above, the federal legislation includes significant modifications relating to food stamps and child nutrition, supplemental security income (SSI) for children, child support enforcement, benefits for legal immigrants and the social services block grant. A comprehensive description of the impact of the federal legislation on these programs is beyond the scope of this paper. However, a number of sources, including Commerce Clearing House, the Congressional Research Service, the National Governors' Association, the National Conference of State Legislatures and the American Public Welfare Association, have prepared detailed summaries and analyses of P.L. 104-193.



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608)

MO# _____

BURKE	Y	N	/
ANDREA	Y	N	/
GEORGE	Y	N	/
DECKER	Y	N	/
JAUCH	Y	N	/
WINEKE	Y	N	/
WEEDEN	Y	N	/
COWLES	Y	N	/
BRANCEL	Y	N	A
FOTI	Y	N	A
SCHNEIDERS	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
PORTER	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

December 16, 1996

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

AYE _____ NO _____ ABS _____

SUBJECT: Notification of Proposed Modifications to the AFDC Program: Agenda Item IX(B)

On November 27, 1996, the Joint Committee on Finance received a request from the Governor relating to the expenditure of federal block grant funds under the temporary assistance to needy families (TANF) program. In addition to requesting approval by the Committee for expenditure of the federal block grants, the November 27 request notifies the Committee of several proposed changes to the current aid to families with dependent children (AFDC) program that are intended to facilitate the transition to the Wisconsin Works (W-2) program.

The issue before the Committee is approval of the requested expenditure of the federal block grant funds. That question is addressed in a separate paper, prepared by this office, identified as "Agenda Item IX(A)". The purpose of this paper is to bring to the attention of the Committee the policy changes to the state's AFDC program which the administration wishes to implement. This paper provides information regarding the federal TANF provisions and the policy changes to the AFDC program proposed by the Governor, and reviews legal issues which surround the proposed program modifications.

FEDERAL TANF PROVISIONS

On August 22, 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), which replaces the AFDC and job opportunities and basic skills (JOBS) programs with a block grant program called temporary assistance to needy families (TANF). Under the TANF program, public assistance benefits and administrative costs will no longer be funded with a federal/state matching arrangement. Instead, federal block grants will be provided to eligible states, with a required contribution of state funds under maintenance of effort provisions.

The federal legislation also imposes work requirements and time limits on recipients of TANF benefits and eliminates the federal entitlement to public assistance that was provided under the AFDC program. In addition, the federal legislation consolidates the federal child care funding sources for AFDC recipients and at-risk families with the child care development block grant. The federal legislation also modifies provisions relating to food stamps and child nutrition, supplemental security income (SSI) for children, child support enforcement, benefits for legal immigrants and the social services block grant.

The Department of Workforce Development (DWD) submitted its initial TANF plan to the federal government on August 22, 1996. The initial plan relates to program expenditures in federal fiscal year 1996 and 1997. Wisconsin's plan has been deemed complete by the federal government, effective August 22. The current AFDC program and the W-2 program will be partially funded with federal TANF revenues.

PROPOSED AFDC POLICY MODIFICATIONS

The Wisconsin Works program was created in 1995 Wisconsin Act 289 as a replacement for the current AFDC program. Under Act 289, the W-2 program must be implemented statewide by October 1, 1997.

Act 289 permits DWD to begin to implement the W-2 program prior to the October 1, 1997, statewide start-up date for selected counties or groups determined by the Department. The Governor's request indicates that DWD will implement a number of modifications to the current AFDC program as part of the transition to W-2. Most of these changes would take effect in January, 1997; however, the changes regarding the two-tier demonstration project would take effect March 1, 1997. Under Act 289, the current AFDC program (including waiver demonstrations) will be repealed on January 1, 1999, or six months after the statewide start-up of W-2, whichever is earlier.

The following sections describe the policy changes proposed by the Governor. This information is based on the Governor's November 27 request and discussions with staff at DOA and DWD. However, the Department intends to implement these changes without adopting statutory language or administrative rules. In the absence of statutory language, it is not certain that the descriptions provided below accurately reflect the Department's intent. In addition, it is not clear whether the Department has the authority under state law to implement some of these provisions without statutory modifications. The final section addresses the Department's legal authority to implement these changes.

Asset Limit

Under the current AFDC program, a family's assets may not exceed \$1,000 in order for the family to be eligible. However, the following assets are exempt: (a) a home of any value; (b) funeral agreements with an equity value of \$1,500 or less per family member; and (c) a motor

vehicle owned by someone in the family if the equity value (fair market value minus the amount owed) is less than \$1,500. If the equity value of a vehicle exceeds \$1,500, the amount in excess is considered in the determination of assets.

Since January 1, 1995, the state has conducted two demonstration projects which provide that: (a) the equity value of any number of vehicles not in excess of \$2,500 is exempt from the asset limit; and (b) once eligibility has been determined, AFDC recipients may save up to \$10,000 in special resource accounts to be used for education and training or to improve the employability of a family member. Under these waivers, one-third of AFDC recipients receive the \$2,500 vehicle asset limit, one-third are allowed to have a \$10,000 special resource account and one-third serve as a control group.

The Governor's proposal would: (a) replace the \$1,000 asset limit under AFDC with the asset limit under W-2, which is \$2,500; and (b) eliminate the \$2,500 vehicle exclusion and the \$10,000 resource account demonstration projects for new recipients. However, these special provisions would continue to apply to AFDC recipients who are currently subject to the two waivers. It should be noted that, under W-2, an exemption from the asset limit will be allowed for the equity value of vehicles up to a total of \$10,000. This higher exclusion for vehicles would not be implemented early under the Governor's proposal.

Benefit Cap Demonstration

Under the current AFDC program, the monthly grant amount generally increases for larger families. However, 1995 Wisconsin Act 12 requires DWD to conduct, pursuant to a federal waiver, an AFDC benefit cap demonstration project which eliminates the grant increase for new children born to AFDC families, beginning on January 1, 1996. The new provisions first applied to babies born on or after November 1, 1996.

Under the benefit cap, a child born into a family more than 10 months after the date the family was first determined to be eligible for AFDC is not considered in determining the amount of the family's AFDC grant unless at least one of the conditions outlined below is met. Children who are subject to the benefit cap continue to be eligible for medical assistance and food stamps. The benefit cap provisions do not apply to persons who are subject to the parental and family responsibility pilot program.

a. The family did not receive AFDC for a period of at least six months, other than as a result of sanctions, and the child was born during that period or not more than 10 months after the family resumed receiving benefits after that period;

b. The child was conceived as a result of incest or a sexual assault in which the mother did not indicate consent, and the incest or sexual assault has been reported to a physician and law enforcement authorities;

c. The child's mother is a dependent child at the time of the child's birth and the child is born as a result of the mother's first pregnancy that resulted in a live birth;

d. The child does not reside with his or her biological mother or father; or

e. The family or child meets other exemption criteria under a rule promulgated by DWD.

Under requirements of the waiver, the benefit cap is being conducted statewide. However, a control group, which is not subject to the benefit cap, is maintained for purposes of evaluating this provision.

The Governor's proposal would end the demonstration status of the benefit cap and, instead, apply these provisions to all new AFDC recipients in the state. With this change, no new applicants would be added to the control group beginning January 1, 1997. The benefit cap would first apply to babies born to these families in November, 1997. The current exemptions from the benefit cap would be retained.

The request indicates that no additional AFDC recipients would be affected by this modification, because the benefit cap would first apply to babies born in November, 1997, after statewide start-up of W-2. However, if implementation of W-2 is delayed, the Governor's proposal could affect the AFDC benefits of new recipients who otherwise would have been assigned to the control group.

Unlike the AFDC program, there will be no family-size adjustment for cash assistance under W-2. A family's grant will depend upon the type of employment position to which the W-2 participant is assigned and the number of hours that the participant works.

Two-Tier Demonstration

Since July 1, 1994, the state has conducted a waiver demonstration in Kenosha, Milwaukee, Racine and Rock Counties under which AFDC recipients who are new arrivals to Wisconsin receive a grant, for the first six months of residency in this state, that is calculated on the basis of the benefits the family would have received in the most recent state of residence. This provision applies to all new arrivals in these four counties.

The Governor's proposal would replace the current two-tier provisions in these counties with the residency requirement under the W-2 program, effective March 1, 1997. Under Act 289, in order to be eligible for a subsidized W-2 employment position, an individual must have resided in Wisconsin for at least 60 consecutive days prior to applying for assistance and must have demonstrated an intent to continue to reside in this state. However, migrant workers will not have to demonstrate an intent to continue to reside in Wisconsin.

With this change, new arrivals in the four pilot counties would be ineligible for AFDC for their first 60 days in Wisconsin rather than provided a grant based on the previous state of residence for their first six months in Wisconsin. The request indicates that the current two-tier provision requires a significant investment of county workers' time that could be devoted to the transition to W-2.

It should be noted that the federal TANF provisions require states to set forth, among other things, specific criteria for the determination of eligibility and whether the state intends to treat families moving into the state differently than other families and, if so, how it intends to treat such families. Federal law also specifies that states may apply program rules and benefit levels of the state from which a family moved if the family has lived in the new state of residence for fewer than 12 months.

Although the federal provisions clearly contemplate a state treating recent arrivals differently, it is unclear whether the federal provision permits states to deny benefits to recent arrivals; the federal law only refers to using the program rules and benefit levels of the previous state of residence. Therefore, the W-2 provision may be inconsistent with the requirements of federal law.

Participation of Parents With Young Children

State law requires AFDC recipients to participate in the JOBS program unless the recipient is the primary caretaker relative of a child under age one or is exempt for some other reason. Act 289 required DWD to request a federal waiver to require AFDC recipients to participate in the JOBS program on a full-time basis when the youngest child is 12 weeks old. To date, this waiver has not been granted.

Under the W-2 program, a \$555 monthly cash grant will be provided to eligible participants until their youngest child is 12 weeks old. After that, the parent will have to work in a subsidized employment position or an unsubsidized job in order to receive cash assistance.

The Governor's proposal would modify the current AFDC program to require current AFDC recipients who have a child older than 12 weeks but younger than one year to attend parenting and work participation classes. New applicants for AFDC who have a child under age one will be immediately required to attend parenting and work participation classes. In addition, new applicants will be required to begin job search activities when the child is nine months old. The federal TANF provisions permit, but do not require, states to exempt single custodial parents of children under one year old from engaging in work activities.

Teen Parents Living Arrangement

Under current state law, if a person applying for AFDC is under 18 years of age, has never married and is pregnant or has a dependent child in his or her care, the person is not eligible for AFDC unless he or she lives with a parent, legal guardian or other adult relative or in a foster

home, treatment foster home, maternity home or other supportive living arrangement supervised by an adult.

This requirement does not apply in the following situations: (a) the minor parent applying for AFDC has no parent or legal guardian whose whereabouts are known; (b) no parent or legal guardian allows the minor parent to live in his or her home; (c) the Department determines that the physical or emotional health or safety of the minor parent would be jeopardized if the minor parent and the dependent child lived with the person's parent or legal guardian; (d) the minor parent lived apart from his or her parent or legal guardian for at least one year before the birth of any dependent child or before the minor parent applied for AFDC; or (e) the county department of human/social services otherwise finds good cause not to apply the requirement.

The Governor's proposal indicates that, under the current AFDC program, no new independent living arrangements for unmarried teen parents will be approved under the exceptions listed above. It should be noted that the state provisions described above were previously included under federal provisions for the AFDC program. Act 289 directed DWD to request a federal waiver to eliminate the exceptions under (a) through (e). If the waiver is granted, the minor parent living arrangement requirement will apply, without exception. To date no waiver has been granted for this provision.

Under the W-2 program, an individual who is less than 18 years old will not be eligible for a subsidized employment position or cash assistance.

Under the new federal law, TANF funds generally may not be used to provide assistance to an unmarried individual under age 18 who has a minor child in his or her care unless the individual and the minor child reside in the home of a parent, legal guardian or other adult relative of the individual. In certain situations, if such an individual is not living in the home of a parent, guardian or other adult relative, the state must provide or assist the individual in locating another appropriate adult-supervised supportive living arrangement, unless the state determines that the individual's living arrangement is appropriate.

LEGAL REVIEW OF PROPOSED POLICY MODIFICATIONS

As noted, Act 289 permits DWD to begin to implement the W-2 program prior to the October 1, 1997, statewide start-up date for selected counties or groups determined by the Department. Specifically Act 289 provides: "If a waiver is granted and in effect or legislation is enacted, and if the Department determines that sufficient funds are available, the Department may begin to implement the Wisconsin Works program no sooner than July, 1, 1996, for selected counties or groups determined by the Department and shall implement the Wisconsin Works program statewide for all groups no later than September 1997." In addition to this state provision, the new federal law allows states to terminate existing AFDC waivers before the expiration date. The Governor's request cites these statutes as providing legal authority for DWD to implement the policy changes outlined above without enacting additional legislation.

The Governor's request was reviewed by attorneys at the Legislative Reference Bureau (LRB) and Legislative Council.

Legislative Reference Bureau Review

The LRB attorney responsible for drafting the W-2 legislation believes that the Act 289 provision does not give DWD the authority to implement certain components of W-2. Rather, it gives the Department the authority to begin the entire W-2 program in certain counties or for certain individuals instead of having to implement the program statewide immediately.

The LRB notes that "Wisconsin Works" is a defined term that includes all of the components of W-2. Generally, an agency may not select which parts of the law it will implement, although the law may authorize the agency to apply the law only in certain counties or to certain groups, which is how the LRB interprets the Act 289 provision. Thus, any changes to the current AFDC provisions to bring them closer to the W-2 provisions must be done pursuant to authority under the AFDC statutes.

Based on an analysis of the current state AFDC provisions, the LRB believes that DWD may end the special resource account provision and the two-tier demonstration without additional legislation. The special resource accounts may be discontinued because state law permits, but does not require, DWD to authorize recipients to establish such accounts. The two-tier demonstration may be ended because state law directs the Department to implement the project in certain counties and authorizes DWD to conduct the project for a period not to exceed 36 months. This provision seems to suggest that, while DWD must conduct the demonstration project for some period, it may stop conducting the project at any time so long as it does not conduct the project for more than 36 months.

The LRB believes that all of the other policy modifications outlined above would require statutory changes because the current provisions are required under state law or an existing federal waiver. These include: increasing the AFDC asset limit from \$1,000 to \$2,500; applying the benefit cap provisions to all new applicants; adopting the 60-day residency requirement in the four two-tier counties; requiring parents of children under age one to participate in parenting classes and job search; and disallowing any new independent living arrangements for teen parents.

This analysis is based on state law. With the exception of the 60-day residency requirement (which may or may not be permitted under federal law, as noted above), it appears that the changes proposed by the Governor are consistent with the federal TANF provisions.

Finally, the LRB indicates that there may be significant constitutional issues presented by the imposition of a 60-day residency requirement under AFDC. In a 1969 decision (Shapiro v. Thompson), the U.S. Supreme Court held a one-year residency eligibility requirement for public assistance to be unconstitutional as an impediment to the right to travel and did not indicate

whether a shorter waiting period would be permissible. In contrast, in 1992, the Wisconsin Supreme Court found a 60-day waiting period for general relief to be constitutional (Jones v. Milwaukee County).

While Jones does not appear to have been challenged and thus is the current statement of the law in Wisconsin, no other court has followed the ruling (although it seems that none has rejected it either). It is unclear whether the Wisconsin Supreme Court's analysis in Jones or the U.S. Supreme Court's analysis in Shapiro would be followed if the 60-day residency requirement proposed by the Governor were challenged.

Legislative Council Review

The Legislative Council notes that, while it could be argued that the phrase "begin to implement the Wisconsin Works program" authorizes DWD to conduct a piece-by-piece implementation of W-2 (the administration's interpretation), it may also be argued that this provision authorizes only the early implementation of all of W-2 in selected counties or selected groups. It is not clear how a court would rule on this issue should a challenge be made to the Department's proposal.

The Legislative Council also indicates that, if it were determined that DWD does not have the authority to implement parts of W-2 by modifying the current AFDC program as described above, many of the changes it is suggesting would need to be reviewed to determine whether statutory changes would be required. On the other hand, if DWD does have the authority to begin implementing the proposed changes, it appears that many, if not all, of these modifications would require rule-making under Chapter 227 of the Statutes. If these changes were made without following rules promulgation procedures, and were successfully challenged by an interested party, the implementation of those changes could be enjoined and further delayed. As mentioned, staff at DWD have indicated that the Department intends to implement these changes without adopting legislation or administrative rules.

SUMMARY

This paper has provided a description of the program and policy changes to the state's AFDC program which the Governor wishes to implement. In addition, the paper discusses the legal aspects of the changes and identifies issues, as raised by legislative attorneys, which might prompt challenges to the implementation of those changes.

Given the magnitude of the issues and legal uncertainties that surround them, the Committee may wish to seek further legal clarification and/or a legislative role in the policy modifications prior to their commencement.

Prepared by: Rob Reinhardt

no motion
letter from the Co-Chairs questioning
authority to do this w/o statutory auth.
or admin. rule changes.



DANE COUNTY

Richard J. Phelps
County Executive

December 16, 1996

Senator Brian Burke, Co-Chair
Joint Committee on Finance
Room 302H
State Capitol
Madison, WI 53707

Representative Ben Brancel, Co-Chair
Joint Committee on Finance
Room LL2-MLK
State Capitol
Madison, WI 53707

Dear Senator Burke and Representative Brancel:

Last Friday afternoon, our Department of Human Services learned of the Department of Workforce Development's arrogant intent to modify five areas of the state's AFDC program, with several of those program changes going into effect on January 1, 1997.

The most significant of these changes is a new state requirement that all AFDC parents, whose youngest child is under 1 year and older than 12 weeks, participate in parenting and work participation classes. This is a part of the Wisconsin Works program that was not to have gone into effect until fall of next year.

In Dane County, this new requirement will affect 275 families on our current caseload. According to the information we received from the Legislative Fiscal Bureau, **this new requirement comes with no new funding for either programming or the child care that will be necessary for parents to find to participate in the required classes.**

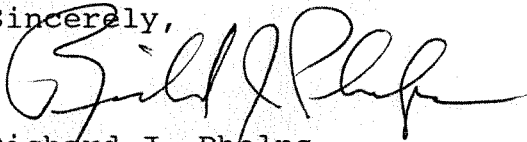
Even though the implementation date for these new changes is just 8 working days away from today, we have, as of yet, received no formal notification from the Department of Workforce Development that these changes will be implemented.

The state is claiming it has the statutory authorization to implement these changes without Legislature's approval, based on Act 289. However, the Legislative Reference Bureau is rightfully questioning the state's authority to do so.

Even if the state had the statutory authority to make the policy changes proposed, this is a poor way to do business. There is not a single business with which my county contracts who would be willing to substantially increase the services it is expected to render within such a short timeline and with no new funds. If this is the way the Legislature can expect the state to do business under W-2, now that the Legislature's oversight has been severely curtailed under Act 289, I would hope you would act in the next session to reclaim that lost oversight on W-2.

My county will simply not be able to implement the changes the department is seeking. If we are provided with additional funds for the new program requirements and child care, we can discuss implementing this change within a reasonable timeframe, but not within just over one week's time.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Phelps". The signature is fluid and cursive, with the first name "Richard" and last name "Phelps" clearly distinguishable.

Richard J. Phelps
Dane County Executive

RJP:mw

cc: Members, Joint Committee on Finance
Governor Tommy G. Thompson



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

STAFF RECOMMENDATION
LAST P ON PAGE 8, DO
AS A MOTION

(OR DO LETTER TO
AGENCY W/ BRANZEL
SAYING THEY NEED
LEGISLATION/RULES TO DO
THIS

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Notification of Proposed Modifications to the AFDC Program: Agenda Item IX(B)

On November 27, 1996, the Joint Committee Governor relating to the expenditure of federal block grants to needy families (TANF) program. In addition to the expenditure of the federal block grants, the November several proposed changes to the current aid to families that are intended to facilitate the transition to the Wisconsin

The issue before the Committee is approval of block grant funds. That question is addressed in a document identified as "Agenda Item IX(A)". The purpose of this Committee the policy changes to the state's AFDC program to implement. This paper provides information regarding policy changes to the AFDC program proposed by the Wisconsin Department of Social Services and the surrounding the proposed program modifications.

See letter to
Sec. Leach re:
Constitutionality of
60 day residency
requirement.

FEDERAL TANF PROVISIONS

On August 22, 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), which replaces the AFDC and job opportunities and basic skills (JOBS) programs with a block grant program called temporary assistance to needy families (TANF). Under the TANF program, public assistance benefits and administrative costs will no longer be funded with a federal/state matching arrangement. Instead, federal block grants will be provided to eligible states, with a required contribution of state funds under maintenance of effort provisions.

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The Wisconsin Works program was created in 1995 Wisconsin Act 289 as a replacement for the current AFDC program. Under Act 289, the W-2 program must be implemented statewide by October 1, 1997.

Act 289 permits DWD to begin to implement the W-2 program prior to the October 1, 1997, statewide start-up date for selected counties or groups determined by the Department. The Governor's request indicates that DWD will implement a number of modifications to the current AFDC program as part of the transition to W-2. Most of these changes would take effect in January, 1997; however, the changes regarding the two-tier demonstration project would take effect March 1, 1997. Under Act 289, the current AFDC program (including waiver demonstrations) will be repealed on January 1, 1999, or six months after the statewide start-up of W-2, whichever is earlier.

The following sections describe the policy changes proposed by the Governor. This information is based on the Governor's November 27 request and discussions with staff at DOA and DWD. However, the Department intends to implement these changes without adopting statutory language or administrative rules. In the absence of statutory language, it is not certain that the descriptions provided below accurately reflect the Department's intent. In addition, it is not clear whether the Department has the authority under state law to implement some of these provisions without statutory modifications. The final section addresses the Department's legal authority to implement these changes.

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vehicle owned by someone in the family if the equity value (fair market value minus the amount owed) is less than \$1,500. If the equity value of a vehicle exceeds \$1,500, the amount in excess is considered in the determination of assets.

Since January 1, 1995, the state has conducted two demonstration projects which provide that: (a) the equity value of any number of vehicles not in excess of \$2,500 is exempt from the asset limit; and (b) once eligibility has been determined, AFDC recipients may save up to \$10,000 in special resource accounts to be used for education and training or to improve the employability of a family member. Under these waivers, one-third of AFDC recipients receive the \$2,500 vehicle asset limit, one-third are allowed to have a \$10,000 special resource account and one-third serve as a control group.

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Benefit Cap Demonstration

Under the current AFDC program, the monthly grant amount generally increases for larger families. However, 1995 Wisconsin Act 12 requires DWD to conduct, pursuant to a federal waiver, an AFDC benefit cap demonstration project which eliminates the grant increase for new children born to AFDC families, beginning on January 1, 1996. The new provisions first applied to babies born on or after November 1, 1996.

Under the benefit cap, a child born into a family more than 10 months after the date the family was first determined to be eligible for AFDC is not considered in determining the amount of the family's AFDC grant unless at least one of the conditions outlined below is met. Children who are subject to the benefit cap continue to be eligible for medical assistance and food stamps. The benefit cap provisions do not apply to persons who are subject to the parental and family responsibility pilot program.

a. The family did not receive AFDC for a period of at least six months, other than as a result of sanctions, and the child was born during that period or not more than 10 months after the family resumed receiving benefits after that period;

b. The child was conceived as a result of incest or a sexual assault in which the mother did not indicate consent, and the incest or sexual assault has been reported to a physician and law enforcement authorities;

c. The child's mother is a dependent child at the time of the child's birth and the child is born as a result of the mother's first pregnancy that resulted in a live birth;

d. The child does not reside with his or her biological mother or father; or

e. The family or child meets other exemption criteria under a rule promulgated by DWD.

Under requirements of the waiver, the benefit cap is being conducted statewide. However, a control group, which is not subject to the benefit cap, is maintained for purposes of evaluating this provision.

The Governor's proposal would end the demonstration status of the benefit cap and, instead, apply these provisions to all new AFDC recipients in the state. With this change, no new applicants would be added to the control group beginning January 1, 1997. The benefit cap would first apply to babies born to these families in November, 1997. The current exemptions from the benefit cap would be retained.

The request indicates that no additional AFDC recipients would be affected by this modification, because the benefit cap would first apply to babies born in November, 1997, after statewide start-up of W-2. However, if implementation of W-2 is delayed, the Governor's proposal could affect the AFDC benefits of new recipients who otherwise would have been assigned to the control group.

Unlike the AFDC program, there will be no family-size adjustment for cash assistance under W-2. A family's grant will depend upon the type of employment position to which the W-2 participant is assigned and the number of hours that the participant works.

Two-Tier Demonstration

Since July 1, 1994, the state has conducted a waiver demonstration in Kenosha, Milwaukee, Racine and Rock Counties under which AFDC recipients who are new arrivals to Wisconsin receive a grant, for the first six months of residency in this state, that is calculated on the basis of the benefits the family would have received in the most recent state of residence. This provision applies to all new arrivals in these four counties.

The Governor's proposal would replace the current two-tier provisions in these counties with the residency requirement under the W-2 program, effective March 1, 1997. Under Act 289, in order to be eligible for a subsidized W-2 employment position, an individual must have resided in Wisconsin for at least 60 consecutive days prior to applying for assistance and must have demonstrated an intent to continue to reside in this state. However, migrant workers will not have to demonstrate an intent to continue to reside in Wisconsin.

With this change, new arrivals in the four pilot counties would be ineligible for AFDC for their first 60 days in Wisconsin rather than provided a grant based on the previous state of residence for their first six months in Wisconsin. The request indicates that the current two-tier provision requires a significant investment of county workers' time that could be devoted to the transition to W-2.

It should be noted that the federal TANF provisions require states to set forth, among other things, specific criteria for the determination of eligibility and whether the state intends to treat families moving into the state differently than other families and, if so, how it intends to treat such families. Federal law also specifies that states may apply program rules and benefit levels of the state from which a family moved if the family has lived in the new state of residence for fewer than 12 months.

Although the federal provisions clearly contemplate a state treating recent arrivals differently, it is unclear whether the federal provision permits states to deny benefits to recent arrivals; the federal law only refers to using the program rules and benefit levels of the previous state of residence. Therefore, the W-2 provision may be inconsistent with the requirements of federal law.

Participation of Parents With Young Children

State law requires AFDC recipients to participate in the JOBS program unless the recipient is the primary caretaker relative of a child under age one or is exempt for some other reason. Act 289 required DWD to request a federal waiver to require AFDC recipients to participate in the JOBS program on a full-time basis when the youngest child is 12 weeks old. To date, this waiver has not been granted.

Under the W-2 program, a \$555 monthly cash grant will be provided to eligible participants until their youngest child is 12 weeks old. After that, the parent will have to work in a subsidized employment position or an unsubsidized job in order to receive cash assistance.

The Governor's proposal would modify the current AFDC program to require current AFDC recipients who have a child older than 12 weeks but younger than one year to attend parenting and work participation classes. New applicants for AFDC who have a child under age one will be immediately required to attend parenting and work participation classes. In addition, new applicants will be required to begin job search activities when the child is nine months old. The federal TANF provisions permit, but do not require, states to exempt single custodial parents of children under one year old from engaging in work activities.

Teen Parents Living Arrangement

Under current state law, if a person applying for AFDC is under 18 years of age, has never married and is pregnant or has a dependent child in his or her care, the person is not eligible for AFDC unless he or she lives with a parent, legal guardian or other adult relative or in a foster

home, treatment foster home, maternity home or other supportive living arrangement supervised by an adult.

This requirement does not apply in the following situations: (a) the minor parent applying for AFDC has no parent or legal guardian whose whereabouts are known; (b) no parent or legal guardian allows the minor parent to live in his or her home; (c) the Department determines that the physical or emotional health or safety of the minor parent would be jeopardized if the minor parent and the dependent child lived with the person's parent or legal guardian; (d) the minor parent lived apart from his or her parent or legal guardian for at least one year before the birth of any dependent child or before the minor parent applied for AFDC; or (e) the county department of human/social services otherwise finds good cause not to apply the requirement.

The Governor's proposal indicates that, under the current AFDC program, no new independent living arrangements for unmarried teen parents will be approved under the exceptions listed above. It should be noted that the state provisions described above were previously included under federal provisions for the AFDC program. Act 289 directed DWD to request a federal waiver to eliminate the exceptions under (a) through (e). If the waiver is granted, the minor parent living arrangement requirement will apply, without exception. To date no waiver has been granted for this provision.

Under the W-2 program, an individual who is less than 18 years old will not be eligible for a subsidized employment position or cash assistance.

Under the new federal law, TANF funds generally may not be used to provide assistance to an unmarried individual under age 18 who has a minor child in his or her care unless the individual and the minor child reside in the home of a parent, legal guardian or other adult relative of the individual. In certain situations, if such an individual is not living in the home of a parent, guardian or other adult relative, the state must provide or assist the individual in locating another appropriate adult-supervised supportive living arrangement, unless the state determines that the individual's living arrangement is appropriate.

LEGAL REVIEW OF PROPOSED POLICY MODIFICATIONS

As noted, Act 289 permits DWD to begin to implement the W-2 program prior to the October 1, 1997, statewide start-up date for selected counties or groups determined by the Department. Specifically Act 289 provides: "If a waiver is granted and in effect or legislation is enacted, and if the Department determines that sufficient funds are available, the Department may begin to implement the Wisconsin Works program no sooner than July, 1, 1996, for selected counties or groups determined by the Department and shall implement the Wisconsin Works program statewide for all groups no later than September 1997." In addition to this state provision, the new federal law allows states to terminate existing AFDC waivers before the expiration date. The Governor's request cites these statutes as providing legal authority for DWD to implement the policy changes outlined above without enacting additional legislation.

STATE OF WISCONSIN

**SENATE CHAIR
BRIAN BURKE**

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**ASSEMBLY CHAIR
BEN BRANCEL**

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JOINT COMMITTEE ON FINANCE

December 23, 1996

Governor Tommy Thompson
Room 115 East, State Capitol
Madison, WI 53702

Dear Governor Thompson:

On November 27, 1996, the Joint Committee on Finance received your request, pursuant to 1995 Wisconsin Act 132, relating to the expenditure of federal block grants under the temporary assistance to needy families (TANF) program. The November 27 request also notified the Committee of the administration's intent for the Department of Workforce Development to implement the following changes to the current AFDC program to facilitate the transition to the Wisconsin Works program in 1997:

- Replace the current AFDC asset limit of \$1,000 with the \$2,500 limit under the W-2 program and eliminate the special resource account and vehicle exclusion waivers for new applicants.
- Apply the AFDC benefit cap provisions to all new applicants.
- Eliminate the current two-tier provision in Kenosha, Milwaukee, Racine and Rock Counties and, instead, implement the 60-day residency requirement that is provided under the W-2 program in those counties.
- Require AFDC recipients who have a child older than 12 weeks but younger than one year to attend parenting and work participation classes. Require new applicants for AFDC who have a child under age one to immediately attend parenting and work participation classes and to begin job search activities when the child is nine months old.

Governor Tommy Thompson

December 23, 1996

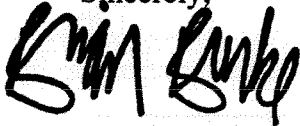
Page 2

- Provide that no new independent living arrangements for teen parents will be approved under the current AFDC program.

Under your proposal, most of these changes would take effect in January, 1997. However, the modifications to the two-tier demonstration project would take effect on March 1, 1997. These changes would be implemented without adopting statutory modifications or administrative rules.

The request was reviewed by attorneys at the Legislative Reference Bureau and the Legislative Council. These reviews raise questions regarding the Department's legal authority to implement the proposed changes. Because of these concerns, we request that the administration provide us with a detailed summary of its position on this issue. In addition, we request that the administration not proceed with implementing the proposed changes until we have had an opportunity to review the administration's response.

Sincerely,



BRIAN BURKE
Senate Chair



BEN BRANCEL
Assembly Chair

BB/BB/jc

cc: Members, Joint Committee on Finance
Dick Wegner, Department of Workforce Development
Jean Rogers, Department of Workforce Development

OCT-01-1996 09:32

DES/ADMIN OFC

608 261 6376 P.02



DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for Children and Families
Chicago Regional Office

Refer To: KD5C3

September 30, 1996

Richard C. Wegner, Acting Secretary
Department of Workforce Development
201 East Washington Avenue
P. O. Box 7946
Madison, Wisconsin 53707-7946

Dear Mr. Wegner:

I am pleased to inform you that, as of September 30, 1996, Wisconsin is an "eligible State" for purposes of receiving block grant funding for the Needy Families (TANF) program authorized by the Social Security Act, as amended. By this finding, the Secretary's delegate neither approves nor disapproves the policies and practices outlined in the plan. Since Wisconsin is now an eligible State, the Secretary's delegate is authorizing funding for FY 1996, computed from the date of receipt of your plan, in the amount of \$34,774,689 and funding for FY 1997 in the amount of \$318,188,410. As soon as expenditure estimates are available for the Aid to Families with Dependent Children, Emergency Assistance, and Job Opportunities and Basic Skills Training programs for the period between August 22, 1996 and September 29, 1996, we will offset these from your TANF funding for FY 1996. In addition to triggering funding, Wisconsin's becoming an eligible state means that Wisconsin will come under all the requirements of TANF, including the participation and work requirements and the five-year lifetime limit on welfare receipt, effective September 30, 1996.

Because the AFDC policies proposed by the state of Wisconsin under its waiver application are incorporated into the state's TANF plan, Wisconsin no longer needs the waiver to implement its proposed reforms. Therefore, the Department now considers the AFDC portion of your waiver application moot. The Health Care Financing Administration will be communicating with you by separate letter about the Medicaid portion of your waiver application.

Item IX (b)

OCT-01-1996 09:32

DES/ADMIN OFC

608 261 6376 P.03

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As we reviewed your plan, issues within this Department's purview arose. We bring the key concerns to your attention. This is not intended to be a comprehensive list of issues, and it does not necessarily reflect issues that may relate to the jurisdiction of other federal and state agencies. First, Wisconsin proposes in this plan to require families to reside in Wisconsin for 60 days before they become eligible for benefits and services. This policy raises Shapiro v. Thompson, 394 U.S. 618 (1969), constitutional questions and statutory concerns arising out of a possible conflict between the proposed policy and section 404(c) of the Social Security Act, as amended.

Second, Wisconsin states that it plans to include in its definition of "income" for determining TANF eligibility the benefits received from a specified list of federal programs. We note that the statutes authorizing some of those programs do not allow the benefits to be counted in determining eligibility for a means-tested program and suggest that you review the authorizing statutes.

I look forward to providing any additional assistance or information that would be useful to you or your staff. If you have any questions, please contact Kay Willmoth, Assistant Regional Administrator for Self-Sufficiency Programs, at 312/353-4439.

Sincerely,



Marion N. Steffy
Regional Administrator



Wisconsin Council 40

AFSCME, AFL-CIO

8033 Excelsior Drive, Suite B
Madison, Wisconsin 53717-1903
Phone: 608 836-4040
Fax: 608 836-4444

Michael Murphy
President
Robert W. Lyons
Executive Director

December 16, 1996

To: Members, Joint Committee on Finance

The Governor has requested numerous changes to the W-2 program that will be considered by your committee today.

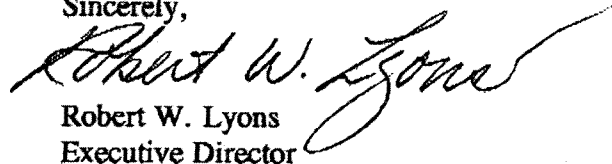
We would like to voice our objection to the changes requested which alter requirements and time lines for implementation of the programs. Specifically the change which requires recipients with children over the age of 12 weeks to become fully engaged as of January 1, 1997.

Such a significant and rapid change will create undue stress and workload increases in all counties which are transitioning to become W-2 providers or preparing to shift those responsibilities to other agencies. County employees will be asked to implement this new requirement with less than two weeks notice, without a work participation class curriculum in place, without parenting classes in place, and most importantly, with a critical shortage of infant day care spots for the 12 week plus infants of W-2 participants. Additionally, no extra dollars have been allocated for counties to implement this change and cover the increase overtime and administrative costs they will incur.

AFSCME Economic Support workers have been instrumental in achieving the marked reduction in AFDC caseloads in Wisconsin, and have participated in developing plans for their counties to become W-2 providers. We support the development of a work based system. But W-2 provider agencies have been working under the assumption that they had until next fall to plan for the important changes necessary for our new system to work. It hardly seems fair or efficient to change the rules of the game before contracts have been negotiated and signed.

We urge you to deny the Governor's request to implement this change and ask the administration to consider a more appropriate and manageable timeline to make these changes. We remain eager and committed to work with the Governor and Legislature to build a better system.

Sincerely,



Robert W. Lyons
Executive Director

RWL/mmb

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in the public service

